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HOUSE BILL 8

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; EXPANDING THE ALLOWANCE OF WITHHOLDING AMOUNTS FOR ESTIMATED TAX PURPOSES; PROVIDING A PAYMENT DATE FOR THE FIRST QUARTERLY PAYMENT OF ESTIMATED CORPORATE INCOME TAX; AMENDING THE FILM PRODUCTION TAX CREDIT TO PROVIDE FOR WITHHOLDING BY FILM PERFORMING ARTIST ENTITIES AND CHANGING DEFINITIONS; EXPANDING COVERAGE OF THE WITHHOLDING TAX ACT; PROVIDING A CREDIT AND REQUIRING ELECTRONIC FILING OF WITHHOLDING INFORMATION RETURNS BY CERTAIN EMPLOYERS AND PAYORS FOR VARIOUS AGENCIES; EXPANDING COVERAGE OF THE OIL AND GAS PROCEEDS WITHHOLDING TAX ACT AND IMPOSING WITHHOLDING RATES; IMPOSING A PENALTY; CREATING A GROSS RECEIPTS TAX EXEMPTION FOR FILM PERFORMING ARTIST ENTITIES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

2 Section 1. Section 7-2-12.2 NMSA 1978 (being Laws 1996,  
3 Chapter 17, Section 1, as amended) is amended to read:

4 "7-2-12.2. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED  
5 TAX--PENALTY.--

6 A. Except as otherwise provided in this section,  
7 [~~every~~] an individual who is required to file an income tax  
8 return under the Income Tax Act shall pay the required annual  
9 payment in installments through either withholding or estimated  
10 tax payments.

11 B. For the purposes of this section:

12 (1) "required annual payment" means the lesser  
13 of:

14 (a) ninety percent of the tax shown on  
15 the return of the taxable year or, if no return is filed,  
16 ninety percent of the tax for the taxable year; or

17 (b) one hundred percent of the tax shown  
18 on the return for the preceding taxable year if the preceding  
19 taxable year was a taxable year of twelve months and the  
20 taxpayer filed a New Mexico tax return for that preceding  
21 taxable year; and

22 (2) "tax" means the tax imposed under Section  
23 7-2-3 NMSA 1978 less any amount allowed for applicable credits  
24 and rebates provided by the Income Tax Act.

25 C. There shall be four required installments for

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1 each taxable year. If a taxpayer is not liable for estimated  
2 tax payments on March 31, but becomes liable for estimated tax  
3 at some point after March 31, ~~he~~ the taxpayer must make  
4 estimated tax payments as follows:

5 (1) if the taxpayer becomes required to pay  
6 estimated tax after March 31 and before June 1, fifty percent  
7 of the required annual payment must be paid on or before June  
8 15, twenty-five percent on September 15 and twenty-five percent  
9 on or before January 15 of the following taxable year;

10 (2) if the taxpayer becomes required to pay  
11 estimated tax after May 31, but before September 1, the  
12 taxpayer must pay seventy-five percent of the required annual  
13 payment on or before September 15 and twenty-five percent on or  
14 before January 15 of the following taxable year; and

15 (3) if the taxpayer becomes required to pay  
16 estimated tax after August 31, the taxpayer must pay one  
17 hundred percent of the required annual payment on or before  
18 January 15 of the following taxable year.

19 D. Except as otherwise provided in this section,  
20 for taxpayers reporting on a calendar year basis, estimated  
21 payments of the required annual payment are due on or before  
22 April 15, June 15 and September 15 of the taxable year and  
23 January 15 of the following taxable year. For taxpayers  
24 reporting on a fiscal year other than a calendar year, the due  
25 dates for the installments are the fifteenth day of the fourth,

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1 sixth and ninth months of the fiscal year and the fifteenth day  
2 of the first month following the fiscal year.

3 E. A rancher or farmer who expects to receive at  
4 least two-thirds of [~~his~~] gross income for the taxable year  
5 from ranching or farming, or who has received at least two-  
6 thirds of [~~his~~] gross income for the previous taxable year from  
7 ranching or farming, may:

8 (1) pay the required annual payment for the  
9 taxable year in one installment on or before January 15 of the  
10 following taxable year; or

11 (2) on or before March 1 of the following  
12 taxable year, file a return for the taxable year and pay in  
13 full the amount computed on the return as payable.

14 [~~No~~] A penalty under Subsection G of this section shall  
15 not be imposed unless the rancher or farmer underpays [~~his~~] the  
16 tax by more than one-third. If a joint return is filed, a  
17 rancher or farmer must consider [~~his or her~~] a spouse's gross  
18 income in determining whether at least two-thirds of gross  
19 income is from ranching or farming.

20 F. For the purposes of this section, the amount of  
21 tax deducted and withheld with respect to a taxpayer under the  
22 Withholding Tax Act or the Oil and Gas Proceeds Withholding Tax  
23 Act shall be deemed a payment of estimated tax. An equal part  
24 of the amount of withheld tax shall be deemed paid on each due  
25 date for the applicable taxable year unless the taxpayer

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1 establishes the dates on which all amounts were actually  
2 withheld. In that case, the amounts withheld shall be deemed  
3 payments of estimated tax on the dates on which the amounts  
4 were actually withheld. The taxpayer may apply the provisions  
5 of this subsection separately to wage withholding and any other  
6 amounts withheld under the Withholding Tax Act or the Oil and  
7 Gas Proceeds Withholding Tax Act.

8 G. Except as otherwise provided in this section, in  
9 the case of an underpayment of the required annual payment by a  
10 taxpayer, there shall be added to the tax a penalty determined  
11 by applying the rate specified in Subsection B of Section  
12 7-1-67 NMSA 1978 to the amount of the underpayment for the  
13 period of the underpayment, provided:

14 (1) the amount of the underpayment shall be  
15 the excess of the amount of the required annual payment over  
16 the amount, if any, paid on or before the due date for the  
17 installment;

18 (2) the period of the underpayment runs from  
19 the due date for the installment to whichever of the following  
20 dates is earlier:

21 (a) the fifteenth day of the fourth  
22 month following the close of the taxable year; or

23 (b) with respect to any portion of the  
24 underpayment, the date on which the portion was paid; and

25 (3) a payment of estimated tax shall be

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1 credited against unpaid or underpaid installments in the order  
2 in which the installments are required to be paid.

3 H. No penalty shall be imposed under Subsection G  
4 of this section for any taxable year if:

5 (1) the difference between the following is  
6 less than five hundred dollars (\$500):

7 (a) the tax shown on the return for the  
8 taxable year or, when no return is filed, the tax for the  
9 taxable year; and

10 (b) any amount withheld under the  
11 provisions of the Withholding Tax Act or the Oil and Gas  
12 Proceeds Withholding Tax Act for that taxpayer for that taxable  
13 year;

14 (2) the [~~individual's~~] taxpayer's preceding  
15 taxable year was a taxable year of twelve months, the  
16 [~~individual~~] taxpayer did not have a tax liability for the  
17 preceding taxable year and the [~~individual~~] taxpayer was a  
18 resident of New Mexico for the entire taxable year;

19 (3) through either withholding or estimated  
20 tax payments, the [~~individual~~] taxpayer paid the required  
21 annual payment as defined in Subsection B of this section; or

22 (4) the secretary determines that the  
23 underpayment was not due to fraud, negligence or disregard of  
24 rules and regulations.

25 I. If on or before January 31 of the following

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1 taxable year the taxpayer files a return for the taxable year  
2 and pays in full the amount computed on the return as payable,  
3 then ~~no~~ a penalty under Subsection G of this section shall  
4 not be imposed on an underpayment of the fourth required  
5 installment for the taxable year.

6 J. This section applies to taxable years of less  
7 than twelve months and to taxpayers reporting on a fiscal year  
8 other than a calendar year in the manner determined by  
9 regulation or instruction of the secretary.

10 K. Except as otherwise provided in Subsection L of  
11 this section, this section applies to any estate or trust.

12 L. This section does not apply to any trust that is  
13 subject to the tax imposed by Section 511 of the Internal  
14 Revenue Code or that is a private foundation. For a taxable  
15 year that ends before the date two years after the date of the  
16 decedent's death, this section does not apply to:

17 (1) the estate of the decedent; or

18 (2) any trust all of which was treated under  
19 Subpart E of Part I of Subchapter J of Chapter 1 of the  
20 Internal Revenue Code as owned by the decedent and to which the  
21 residue of the decedent's estate will pass under the decedent's  
22 will or, if no will is admitted to probate, that is the trust  
23 primarily responsible for paying debts, taxes and expenses of  
24 administration.

25 M. The provisions of this section do not apply to

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1 first-year residents."

2 Section 2. Section 7-2A-9.1 NMSA 1978 (being Laws 1986,  
3 Chapter 5, Section 1, as amended by Laws 2003, Chapter 86,  
4 Section 2 and by Laws 2003, Chapter 295, Section 1) is amended  
5 to read:

6 "7-2A-9.1. ESTIMATED TAX DUE--PAYMENT OF ESTIMATED TAX--  
7 PENALTY--EXEMPTION.--

8 A. Every taxpayer shall pay estimated corporate  
9 income tax to the state of New Mexico during its taxable year  
10 if its tax after applicable credits is five thousand dollars  
11 (\$5,000) or more in the current taxable year. A taxpayer to  
12 which this section applies shall calculate estimated tax by one  
13 of the following methods:

14 (1) estimating the amount of tax due, net of  
15 any credits, for the current taxable year, provided that the  
16 estimated amount is at least eighty percent of the amount  
17 determined to be due for the taxable year;

18 (2) using as the estimate an amount equal to  
19 one hundred percent of the tax due for the previous taxable  
20 year, if the previous taxable year was a full twelve-month  
21 year;

22 (3) using as the estimate an amount equal to  
23 one hundred ten percent of the tax due for the taxable year  
24 immediately preceding the previous taxable year, if the taxable  
25 year immediately preceding the previous taxable year was a full

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1 twelve-month year and the return for the previous taxable year  
2 has not been filed and the extended due date for filing that  
3 return has not occurred at the time the first installment is  
4 due for the taxable year; or

5 (4) estimating the amount of tax due, net of  
6 any credits, for each fiscal quarter of the current taxable  
7 year, provided that the estimated amount is at least eighty  
8 percent of the amount determined to be due for that quarter.

9 B. If Subsection A of this section applies, the  
10 amount of estimated tax shall be paid in installments as  
11 provided in this subsection. Twenty-five percent of the  
12 estimated tax calculated under Paragraph (1), (2) or (3) of  
13 Subsection A of this section or one hundred percent of the  
14 estimated tax calculated under Paragraph (4) of Subsection A of  
15 this section is due on or before the following dates: the  
16 fifteenth day of the fourth month of the taxable year, the  
17 fifteenth day of the sixth month of the taxable year, the  
18 fifteenth day of the ninth month of the taxable year and the  
19 fifteenth day of the twelfth month of the taxable year.  
20 Application of this subsection to a taxable year that is a  
21 fractional part of a year shall be determined by regulation of  
22 the secretary.

23 C. Every taxpayer to which Subsection A of this  
24 section applies that fails to pay the estimated tax when due or  
25 that makes estimated tax payments during the taxable year that

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1 are less than the lesser of eighty percent of the income tax  
2 imposed on the taxpayer under the Corporate Income and  
3 Franchise Tax Act or the amount required by Paragraph (2), (3)  
4 or (4) of Subsection A of this section shall be subject to the  
5 interest and penalty provisions of Sections 7-1-67 and 7-1-69  
6 NMSA 1978 on the underpayment.

7 D. For purposes of this section, the amount of  
8 underpayment shall be the excess of the amount of the  
9 installment that would be required to be paid if the estimated  
10 tax were equal to eighty percent of the tax shown on the return  
11 for the taxable year or the amount required by Paragraph (2),  
12 (3) or (4) of Subsection A of this section or, if no return was  
13 filed, eighty percent of the tax for the taxable year for which  
14 the estimated tax is due less the amount, if any, of the  
15 installment paid on or before the last date prescribed for  
16 payment.

17 E. For purposes of this section, the period of  
18 underpayment shall run from the date the installment was  
19 required to be paid to whichever of the following dates is  
20 earlier:

21 (1) the fifteenth day of the third month  
22 following the end of the taxable year; or

23 (2) with respect to any portion of the  
24 underpayment, the date on which such portion is paid. For the  
25 purposes of this paragraph, a payment of estimated tax on any

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1 installment date shall be applied as a payment of any previous  
2 underpayment only to the extent such payment exceeds the amount  
3 of the installment determined under Subsection D of this  
4 section due on such installment date.

5 F. For the purposes of this section, the amount of  
6 tax deducted and withheld with respect to a taxpayer [~~by a~~  
7 ~~remitter~~] under the Withholding Tax Act or the Oil and Gas  
8 Proceeds Withholding Tax Act shall be deemed a payment of  
9 estimated tax. An equal amount of the amount of withheld tax  
10 shall be deemed paid on each due date for the applicable  
11 taxable year unless the taxpayer establishes the dates on which  
12 all amounts were actually withheld, in which case the amounts  
13 withheld shall be deemed payments of estimated tax on the dates  
14 on which the amounts were actually withheld. The taxpayer may  
15 apply the provisions of this subsection separately to amounts  
16 withheld under the Withholding Tax Act or the Oil and Gas  
17 Proceeds Withholding Tax Act."

18 Section 3. Section 7-2F-2 NMSA 1978 (being Laws 2003,  
19 Chapter 127, Section 2, as amended) is amended to read:

20 "7-2F-2. DEFINITIONS.--As used in Chapter 7, Article 2F  
21 NMSA 1978:

22 A. "commercial audiovisual product" means a film or  
23 a videogame intended for commercial exploitation;

24 B. "direct production expenditure" means a  
25 transaction that is subject to taxation in New Mexico,

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1 including:

2 (1) payment of wages, fringe benefits or fees  
3 for talent, management or labor to a person who is a New Mexico  
4 resident for purposes of the Income Tax Act;

5 (2) payment to a [~~personal services~~  
6 ~~corporation~~] film performing artist entity for the services of  
7 a performing artist if the entity:

8 (a) [~~the personal services corporation~~]  
9 pays gross receipts tax in New Mexico on the portion of those  
10 payments qualifying for the tax credit; and

11 (b) [~~the performing artist receiving~~  
12 ~~payments from the personal services corporation pays New Mexico~~  
13 ~~income tax~~] deducts and remits withheld income tax pursuant to  
14 Subsection D of Section 7-3-12 NMSA 1978; and

15 (3) any of the following provided by a vendor:

16 (a) the story and scenario to be used  
17 for a film;

18 (b) set construction and operations,  
19 wardrobe, accessories and related services;

20 (c) photography, sound synchronization,  
21 lighting and related services;

22 (d) editing and related services;

23 (e) rental of facilities and equipment;

24 (f) leasing of vehicles, not including  
25 the chartering of aircraft for out-of-state transportation;

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1 however, New Mexico-based chartered aircraft for in-state  
2 transportation directly attributable to the production shall be  
3 considered a direct production expenditure;

4 (g) food or lodging;

5 (h) commercial airfare if purchased  
6 through a New Mexico-based travel agency or travel company for  
7 travel to and from New Mexico or within New Mexico that is  
8 directly attributable to the production;

9 (i) insurance coverage and bonding if  
10 purchased through a New Mexico-based insurance agent; and

11 (j) other direct costs of producing a  
12 film in accordance with generally accepted entertainment  
13 industry practice;

14 C. "federal new markets tax credit program" means  
15 the tax credit program codified as Section 45D of the United  
16 States Internal Revenue Code of 1986, as amended;

17 D. "film" means a single media or multimedia  
18 program, excluding advertising messages other than national or  
19 regional advertising messages intended for exhibition, that:

20 (1) is fixed on film, digital medium,  
21 videotape, computer disc, laser disc or other similar delivery  
22 medium;

23 (2) can be viewed or reproduced;

24 (3) is not intended to and does not violate a  
25 provision of Chapter 30, Article 37 NMSA 1978; and

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1 (4) is intended for reasonable commercial  
2 exploitation for the delivery medium used;

3 E. "film performing artist entity" means a personal  
4 service corporation or other business association that receives  
5 payments for the services of a performing artist;

6 [~~E.~~] F. "film production company" means a person  
7 that produces one or more films or any part of a film; [~~and~~]

8 G. "Internal Revenue Code" means "Internal Revenue  
9 Code" as that term is defined in the Tax Administration Act;

10 H. "personal service corporation" means "personal  
11 service corporation" as that term is defined in the Internal  
12 Revenue Code; and

13 [~~F.~~] I. "postproduction expenditure" means an  
14 expenditure for editing, Foley recording, automatic dialogue  
15 replacement, sound editing, special effects, including  
16 computer-generated imagery or other effects, scoring and music  
17 editing, beginning and end credits, negative cutting,  
18 soundtrack production, dubbing, subtitling or addition of sound  
19 or visual effects; but not including an expenditure for  
20 advertising, marketing, distribution or expense payments."

21 Section 4. Section 7-3-2 NMSA 1978 (being Laws 1990,  
22 Chapter 64, Section 1, as amended) is amended to read:

23 "7-3-2. DEFINITIONS.--As used in the Withholding Tax Act:

24 A. "department" means the taxation and revenue  
25 department, the secretary of taxation and revenue or any

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1 employee of the department exercising authority lawfully  
2 delegated to that employee by the secretary;

3 B. "employee" means either an individual domiciled  
4 within the state who performs services either within or without  
5 the state for an employer or, to the extent permitted by law,  
6 an individual domiciled outside of the state who performs  
7 services within the state for an employer;

8 C. "employer" means a person, or an officer, agent  
9 or employee of that person, having control of the payment of  
10 wages, doing business in or deriving income from sources within  
11 the state for whom an individual performs or performed any  
12 service as the employee of that person, except that if the  
13 person for whom the individual performs or performed the  
14 services does not have control over the payment of the wages  
15 for such services, "employer" means the person having control  
16 of the payment of wages;

17 D. "film performing artist entity" means a personal  
18 service corporation or other business association that receives  
19 payments for the services of a performing artist for the  
20 purposes of the film production tax credit;

21 [~~D.~~] E. "Internal Revenue Code" means the Internal  
22 Revenue Code of 1986, as amended;

23 [~~E.~~] F. "owner" means a partner in a partnership  
24 not taxed as a corporation for federal income tax purposes for  
25 the taxable year, a shareholder of an S corporation or of a

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1 corporation other than an S corporation that is not taxed as a  
2 corporation for federal income tax purposes for the taxable  
3 year, a member of a limited liability company or any similar  
4 person holding an ownership interest in any pass-through  
5 entity;

6 ~~[F.]~~ G. "pass-through entity" means:

7 (1) a film performing artist entity; or

8 (2) any other business association other than:

9 ~~[(1)]~~ (a) a sole proprietorship;

10 ~~[(2)]~~ (b) an estate or trust that does  
11 not distribute income to beneficiaries;

12 ~~[(3)]~~ (c) a corporation, limited  
13 liability company, partnership or other entity not a sole  
14 proprietorship taxed as a corporation for federal income tax  
15 purposes for the taxable year; or

16 ~~[(4)]~~ (d) a partnership that is  
17 organized as an investment partnership in which the partners'  
18 income is derived solely from interest, dividends and sales of  
19 securities;

20 H. "payee" means an individual to whom a payor is  
21 making a pension or annuity payment;

22 ~~[G.]~~ I. "payor" means ~~[any]~~ a person making payment  
23 of a pension or annuity to an individual domiciled in New  
24 Mexico;

25 ~~[H.]~~ J. "payroll period" means a period for which a

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1 payment of wages is made to ~~[the]~~ an employee by ~~[his]~~ the  
2 employee's employer;

3 ~~[F.]~~ K. "person" means any individual, club,  
4 company, cooperative association, corporation, estate, firm,  
5 joint venture, partnership, receiver, syndicate, trust or other  
6 association, limited liability company, limited liability  
7 partnership or gas, water or electric utility owned or operated  
8 by a county or municipality and, to the extent permitted by  
9 law, any federal, state or other governmental unit or  
10 subdivision or an agency, department or instrumentality  
11 thereof;

12 L. "personal service corporation" means "personal  
13 service corporation" as that term is defined in the Internal  
14 Revenue Code;

15 ~~[J.]~~ M. "wagerer" means any person who receives  
16 winnings that are subject to withholding;

17 ~~[K.]~~ N. "wages" means remuneration in cash or other  
18 form for services performed by an employee for an employer;

19 ~~[L.]~~ O. "winnings that are subject to withholding"  
20 means "winnings which are subject to withholding" as that term  
21 is defined in Section 3402 of the Internal Revenue Code;

22 ~~[M.]~~ P. "withholdee" means:

23 (1) an individual domiciled in New Mexico  
24 receiving a pension or annuity from which an amount of tax is  
25 deducted and withheld pursuant to the Withholding Tax Act;

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1 (2) an employee; and

2 (3) a wagerer; and

3 [~~N-~~] Q. "withholder" means a payor, an employer or  
4 any person required to deduct and withhold from winnings that  
5 are subject to withholding."

6 Section 5. Section 7-3-7 NMSA 1978 (being Laws 1961,  
7 Chapter 243, Section 8, as amended) is amended to read:

8 "7-3-7. STATEMENTS OF WITHHOLDING.--

9 A. Except for employers required to file quarterly  
10 withholding information returns pursuant to the Withholding Tax  
11 Act or required to file a wage and contribution report to the  
12 workforce solutions department pursuant to Section 51-1-12 NMSA  
13 1978, every employer shall file an annual statement of  
14 withholding for each employee. [~~This~~] The statement shall be  
15 in a form prescribed by the department and shall be filed with  
16 the department on or before the last day of February of the  
17 year following that for which the statement is made. It shall  
18 include the total compensation paid the employee and the total  
19 amount of tax withheld for the calendar year or portion of a  
20 calendar year if the employee has worked less than a full  
21 calendar year.

22 B. Except for payors who file the quarterly  
23 withholding information returns pursuant to the Withholding Tax  
24 Act, every payor shall file an annual statement of withholding  
25 for each individual from whom some portion of a pension or an

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1 annuity has been deducted and withheld by that payor. [~~This~~]  
2 The statement shall be in a form prescribed by the department  
3 and shall be filed with the department on or before the last  
4 day of February of the year following that for which the  
5 statement is made. It shall include the total amount of  
6 pension or annuity paid to the individual and the amount of tax  
7 withheld for the calendar year.

8 C. Every person required to deduct and withhold tax  
9 from a payment of winnings that are subject to withholding  
10 shall file an annual statement of withholding for each wagerer  
11 from whom some portion of a payment of winnings has been  
12 deducted and withheld by that person. [~~This~~] The statement  
13 shall be in a form prescribed by the department and shall be  
14 filed with the department on or before the last day of February  
15 of the year following that for which the statement is made. It  
16 shall include the total amount of winnings paid to the  
17 individual and the amount of tax withheld for the calendar  
18 year. The department may also require any person who is  
19 required to submit an information return to the internal  
20 revenue service regarding the winnings of another person to  
21 submit copies of the return to the department."

22 Section 6. Section 7-3-12 NMSA 1978 (being Laws 1999,  
23 Chapter 14, Section 3, as amended) is amended to read:

24 "7-3-12. INFORMATION RETURN REQUIRED FROM PASS-THROUGH  
25 ENTITY--WITHHOLDING.--

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1           A. A pass-through entity doing business in this  
2 state shall file an annual information return with the  
3 department on or before the due date of the entity's federal  
4 return for the taxable year. The information return shall be  
5 signed by the business manager or one of the owners of the  
6 pass-through entity.

7           B. The information return required by this section  
8 shall contain all information required by the department,  
9 including:

10                   (1) the pass-through entity's gross income;

11                   (2) the pass-through entity's net income;

12                   (3) the amount of each owner's share of the  
13 pass-through entity's net income; and

14                   (4) the name, address and tax identification  
15 number of each owner entitled to a share of net income.

16           C. A pass-through entity shall provide to each of  
17 its owners sufficient information to enable the owner to comply  
18 with the provisions of the Income Tax Act and the Corporate  
19 Income and Franchise Tax Act with respect to the owner's share  
20 of net income.

21           D. The pass-through entity shall deduct and  
22 withhold from each [~~nonresident~~] owner's share of net income an  
23 amount equal to the owner's share of net income or, if the  
24 pass-through entity is a film performing artist entity that is  
25 a personal service corporation, all of its net income shall be

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1 deemed its owner-employee's share, and the personal service  
2 corporation shall deduct and withhold an amount equal to its  
3 owner-employee's share of deemed net income or, if the  
4 pass-through entity is a film performing artist entity other  
5 than a personal service corporation, any payment made by the  
6 entity multiplied by: [a rate set by department regulation]

7 (1) the highest rate for single individuals  
8 provided in Section 7-2-7 NMSA 1978 in the case of an owner  
9 that is an individual or entity not taxed as a corporation for  
10 federal income tax purposes for the taxable year [the rate  
11 shall not exceed the rate for composite returns] and in the  
12 case of payments made by a film performing artist entity; or

13 (2) except for a film performing artist  
14 entity, a rate set by a department directive that does not  
15 exceed the highest rate provided in Section 7-2A-5 NMSA 1978 in  
16 the case of an owner that is a corporation or other entity  
17 taxed as a corporation for the taxable year [the rate shall not  
18 exceed the maximum rate for corporate income tax].

19 E. The provisions of Subsection D of this section  
20 shall not apply with regard to:

21 [~~(1) the share of net income of a nonresident~~  
22 ~~owner that has executed an agreement in accordance with~~  
23 ~~regulations or instructions of the department that the owner~~  
24 ~~will report and pay tax, if required, on its own return~~  
25 ~~pursuant to the Income Tax Act or the Corporate Income and~~

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1 ~~Franchise Tax Act;~~

2 ~~(2)~~ (1) oil and gas proceeds subject to the  
3 Oil and Gas Proceeds Withholding Tax Act; or

4 ~~(3)~~ (2) a publicly traded partnership as  
5 defined in Subsection (b) of Section 7704 of the Internal  
6 Revenue Code, as may be amended or renumbered, and that is not  
7 treated as a corporation pursuant to that section.

8 F. Amounts deducted from the owner's share of net  
9 income under the provisions of this section shall be a  
10 collected tax. ~~No~~ An owner shall not have a right of action  
11 against the pass-through entity for any amount deducted and  
12 withheld from the owner's share of net income.

13 G. When a pass-through entity has withheld and  
14 deducted an amount pursuant to the Withholding Tax Act from any  
15 payment to an owner that is also a pass-through entity, the  
16 payee pass-through entity may take credit for the amount  
17 withheld in determining any withholding obligation that the  
18 payee pass-through entity may have pursuant to the Withholding  
19 Tax Act."

20 Section 7. A new section of the Withholding Tax Act is  
21 enacted to read:

22 "[NEW MATERIAL] WITHHOLDING INFORMATION RETURN REQUIRED--  
23 PENALTY.--

24 A. An employer that has more than fifty employees  
25 and is not required to file an unemployment insurance tax form

.174566.4GR

1 with the workforce solutions department or a payor shall file  
2 quarterly a withholding information return with the department  
3 on or before the last day of the month following the close of  
4 the calendar quarter.

5 B. The quarterly withholding information return  
6 required by this section shall contain all information required  
7 by the department, including:

8 (1) each employee's or payee's social security  
9 number;

10 (2) each employee's or payee's name;

11 (3) each employee's or payee's gross wages,  
12 pensions or annuity payments;

13 (4) each employee's or payee's state income  
14 tax withheld; and

15 (5) the workers' compensation fees due on  
16 behalf of each employee or payee.

17 C. Each quarterly withholding information return  
18 shall be filed with the department using a department-approved  
19 electronic medium.

20 D. Any employer or payor required to file the  
21 quarterly withholding information return who fails to do so by  
22 the due date or to file the return in accordance with  
23 Subsection C of this section is subject to a penalty in the  
24 amount of fifty dollars (\$50.00)."

25 Section 8. Section 7-3A-2 NMSA 1978 (being Laws 2003,  
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1 Chapter 86, Section 5) is amended to read:

2 "7-3A-2. DEFINITIONS.--As used in the Oil and Gas  
3 Proceeds Withholding Tax Act:

4 A. "department" means the taxation and revenue  
5 department, the secretary of taxation and revenue or any  
6 employee of the department exercising authority lawfully  
7 delegated to that employee by the secretary;

8 B. "oil and gas" means crude oil, natural gas,  
9 liquid hydrocarbons or any combination thereof, or carbon  
10 dioxide;

11 C. "oil and gas proceeds" means any amount derived  
12 from oil and gas production from any well located in New Mexico  
13 and payable as royalty interest, overriding royalty interest,  
14 production payment interest, working interest or any other  
15 obligation expressed as a right to a specified interest in the  
16 cash proceeds received from the sale of oil and gas production  
17 or in the cash value of that production, subject to all taxes  
18 withheld therefrom pursuant to law; "oil and gas proceeds"  
19 excludes "net profits interest" and other types of interest the  
20 extent of which cannot be determined with reference to a  
21 specified share of the oil and gas production;

22 D. "person" means an individual, club, company,  
23 cooperative association, corporation, estate, firm, joint  
24 venture, partnership, receiver, syndicate, trust or other  
25 association, limited liability company, limited liability

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1 partnership or gas, water or electric utility owned or operated  
2 by a county or municipality and, to the extent permitted by  
3 law, a federal, state or other governmental unit or subdivision  
4 or an agency, a department or an instrumentality thereof;

5 E. "remittee" means a person that is entitled to  
6 payment of oil and gas proceeds by a remitter; and

7 F. "remitter" means a person that pays oil and gas  
8 proceeds to any remittee."

9 Section 9. Section 7-3A-3 NMSA 1978 (being Laws 2003,  
10 Chapter 86, Section 6) is amended to read:

11 "7-3A-3. WITHHOLDING FROM OIL AND GAS PROCEEDS.--

12 A. Except as otherwise provided in this section, a  
13 remitter shall deduct and withhold from each payment of oil and  
14 gas proceeds being made to a remittee an amount equal to the  
15 rate specified in Subsection C of this section multiplied by  
16 the gross amount that otherwise would have been payable to the  
17 remittee. If a remitter receives oil and gas proceeds from  
18 which an amount has been deducted and withheld pursuant to the  
19 Oil and Gas Proceeds Withholding Tax Act, the remitter may take  
20 credit for that amount in determining the amount the remitter  
21 must withhold and deduct pursuant to this section in making  
22 payments to a remittee.

23 B. The obligation to deduct and withhold from  
24 payments as provided in Subsection A of this section does not  
25 apply to payments that are made to:

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1                    [~~(1)~~ ~~remittees with a New Mexico address as~~  
2 ~~shown on internal revenue service form 1099-MISC or successor~~  
3 ~~form;~~

4                    ~~(2)~~ (1) the United States, this state or any  
5 agency, instrumentality or political subdivision of either;

6                    [~~(3)~~ (2) any federally recognized Indian  
7 nation, tribe or pueblo or any agency, instrumentality or  
8 political subdivision thereof; or

9                    [~~(4)~~ (3) organizations that have been granted  
10 exemption from the federal income tax by the United States  
11 commissioner of internal revenue as organizations described in  
12 Section 501(c)(3) of the United States Internal Revenue Code of  
13 1986, as amended.

14                    C. The rate of withholding is: [~~six and~~  
15 ~~three-fourths percent for the period October 1, 2003 through~~  
16 ~~December 31, 2004. Thereafter the rate shall be set by~~  
17 ~~department regulation; provided that the rate may not exceed~~  
18 ~~the higher of the maximum bracket rate set by Section 7-2-7~~  
19 ~~NMSA 1978 for the taxable year or the maximum bracket rate set~~  
20 ~~by Section 7-2A-5 NMSA 1978 for the taxable year; and provided~~  
21 ~~further that remitters shall be given ninety days' notice of a~~  
22 ~~change in the rate.]~~

23                    (1) in the case of an owner that is an  
24 individual or entity not taxed as a corporation for federal  
25 income tax purposes for the taxable year, the highest rate for

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1 single individuals provided in Section 7-2-7 NMSA 1978; or  
2 (2) in the case of an owner that is a  
3 corporation or other entity taxed as a corporation for the  
4 taxable year, a rate set by department directive that does not  
5 exceed the highest rate provided in Section 7-2A-5 NMSA 1978.

6 D. If the amount to be withheld from a payment to a  
7 remittee is less than ten dollars (\$10.00), no withholding is  
8 required."

9 Section 10. A new section of the Gross Receipts and  
10 Compensating Tax Act is enacted to read:

11 "[NEW MATERIAL] EXEMPTION--GROSS RECEIPTS TAX--FILM  
12 PERFORMING ARTIST ENTITY.--Receipts of a film performing artist  
13 entity from another film performing artist entity for the  
14 services of a performing artist shall be exempt from the gross  
15 receipts tax. As used in this section, a "film performing  
16 artist entity" is a personal service corporation or other  
17 business association that receives payments for the services of  
18 a performing artist for purposes of the film production tax  
19 credit."

20 Section 11. APPLICABILITY.--The provisions of Section 1  
21 of this act are applicable to taxable years beginning on or  
22 after January 1, 2010. The provisions of Section 2 of this act  
23 are applicable to taxable years beginning on or after January  
24 1, 2009.

25 Section 12. EFFECTIVE DATE.--The effective date of the  
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provisions of:

A. Sections 1, 5, and 7 through 9 of this act is  
January 1, 2010; and

B. Sections 3, 4, 6 and 10 of this act is July 1,  
2009.

Section 13. EMERGENCY.--It is necessary for the public  
peace, health and safety that this act take effect immediately.